tenant in the ratio in which it represented capital and accumulated, but undivided earnings. *Matter of United States Trust Company* (App. Div., 1st Dept. 1920) 180 N. Y. Supp. 12.

The Court, purporting to look through form to substance, treats the sale by T as, in effect, a liquidation. Ordinarily upon a sale there will be no apportionment of the accretion in value of the stock. Admittedly the rule is one more of convenience than justice, yet an argument from policy is found in the desire to protect the *corpus* of the trust: the life-tenant should not be given profits since he will not be called upon to contribute to losses. *Stewart* v. *Phelps* (1902) 71 App. Div. 91, 75 N. Y. Supp. 526, aff'd 173 N. Y. 621, 66 N. E. 1115. Many respectable jurisdictions flatly apply the same rule to the proceeds of liquidation. 2 Perry, Trusts (6th ed.) § 544 n. a. But in New York the accumulated earnings which have not been made working capital of the corporation are deemed income as proceeds of a formal liquidation. *Matter of Rogers* (1897) 22 Ap. Div. 428, 48 N. Y. Supp. 175, aff'd 161 N. Y. 108, 55 N. E. 393, limited by *Matter of Stevens* (1906) 111 App. Div. 773, 98 N. Y. Supp. 281, aff'd 187 N. Y. 471, 80 N. E. 358, or indeed upon a distribution of the Company's property in any form. *United States Trust Co.* v. *Heye* (1918) 224 N. Y. 242, 120 N. E. 645. Even in the purview of the Rogers case, however, the shares in the C Co. received by the assenting majority would be considered capital, 22 App. Div. at p. 438. If then the L Co. had sold the shares in the C Co. to which T was entitled, the cash proceeds in T's hands would equally be capital. The "liquidation" found by the court does not appear to have been more than such a manipulation. Unless it desires to overturn the established law of trusts, the court will not extend the doctrine of the instant case beyond sales where there might or should have been a liquidation. *Cf. Matter of Schaefer* (1917) 178 App. Div. 117, 165 N. Y. Supp 19, aff'd 222 N. Y. 533, 118 N. E. 1076. There is a weakness logically in the court's position which has led other courts, also in the guise of looking through form to substance, to reach the opposite conclusion. *Mercer* v. *Buchanan* (C. C. A. 1904) 132 Fed. 501.

UNFAIR COMPETITION—USE OF ONE'S OWN NAME—ADOPTION BY A CORPORATION.—The defendant, M. M. Newcomer, with others incorporated the M. M. Newcomer Co. and later sold his stock and organized a new corporation as "Newcomer's New Store" at a location near by and engaged in the same or very similar business. *Held,* the defendant was enjoined from the use of the word "Newcomer" in such business, since it was evidently adopted by the defendant corporation for the purpose of misleading the public. *M. M. Newcomer Co.* v. *Newcomer's New Store* (Tenn. 1919) 217 S. W. 822.

Until a surprisingly recent date, it was the law that one had an unqualified privilege to use one's own name in business, despite the fact that such use might result in confusion and pecuniary loss to another person of the same name previously established in that business. *Burgess* v. *Burgess* (1853) 3 DeG. M. & G. *896; *Meneely* v. *Meneely* (1875) 62 N. Y. 427. Where the defendant by the use of some additional artifice or by copying the trade name of the plaintiff acted with intent to deceive the public and to defraud the plaintiff, equitable injunction in some form was granted. See *Schinasi* v. *Schinasi* (1915) 169 App. Div. 887, 155 N. Y. Supp. 867; *Wood* v. *Wood* (1915) 78 Ore. 181, 151 Pac. 969; *Stix etc. Dry Goods Co.* v. *American Piano Co.* (C. C. A. 1913) 211 Fed. 271. But in recent years the courts have

recognized the injustice of allowing the defendant to use his name even without artifice or deception and of incidentally reaping unearned profits from the plaintiff's established reputation. An attempt has been made to adjust the situation by the application of the so-called "explanatory phrase rule" under which the defendant is enjoined from using his name in the same manner as the prior concern but is permitted to use it with modifications—addition of initials, address, or different arrangements of printed matter—or with explanatory phrases—"not connected with", etc. *L. E. Waterman's Co.* v. *Modern Pen Co.* (1914) 235 U. S. 88, 35 Sup. Ct. 91; *World's Disp. Med. Ass'n.* v. *Pierce* (1911) 203 N. Y. 419; 96 N. E. 738; see *Garcia* v. *Garcia* (D. C. 1912) 197 Fed. 637. This protection to the established business would seem to be inadequate; it is suggested that a more just result could be obtained by holding that if one cannot use one's own name without representing his goods as those of another, then he cannot use his own name at all. See Nims, Unfair Competition, (2nd ed.) § 71. The decision of the instant case is clearly sound and can be supported either on the ground that actual evidence of the defendant's fraud was found or under the doctrine that a corporation is bound not to adopt a name which is likely to confuse its product with that of a competitor. *G. B. McVay & Son Seed Co.* v. *McVay Seed & Floral Co.* (Ala. 1918) 79 So. 116; see *Bates Mfg. Co.* v. *Bates Numbering Mach. Co.* (C. C. 1909) 172 Fed. 892, 896.

VENUE—RESIDENCE OF A PARTY TO THE ACTION—TRUSTEE IN BANKRUPTCY.—On a motion for change of venue in order to comply with § 984 of the N. Y. Code of Civil Procedure, providing that an action must be tried in a county in which one of the parties resides, it was *held* that the residence of a trustee in bankruptcy, for the purpose of fixing the place of trial, is the principal office and place of business of the bankrupt, and not the personal residence of the trustee. *Allen* v. *McCormick* (Supreme Court, 1919) 180 N. Y. Supp. 116.

Although the court admitted that the trustee was the real "party" to the action within § 3338 of the Code, and that § 984 permitted an action in any county in which one of the "parties" resided, the court failed to draw what would seem to be the most logical conclusion and to hold that suit could therefore be brought in the county in which the trustee resides. In refusing to adopt this position, and in support of its stand that the residence of the bankrupt was the residence of the trustee, the court cited *Ball* v. *Mabry* (1893) 91 Ga. 781, 18 S. E. 64. That case, fairly construed, would not seem to be authority for such a proposition. The action there was brought under the Georgia Code, 1882 (4th ed.) § 3406, providing that railroad companies were "liable to be sued in any county in which the cause of action originated", and the plaintiff sued the defendant receiver in the county in which the accident took place. The court held, correctly under the circumstances, that the receiver was subject to suit in any county in which the railroad could have been sued. Although the fact of residence was wholly immaterial under that section of the Code, the court in pure *obiter* added that a receiver "resides in each county through which the railroad passes", and cited no authority. The Georgia court's decision is only authority in a case in which the *locus* of the cause of action is the test of venue. Therefore, there seems to be neither reason nor authority in support of the decision in the instant case. Carried to its logical conclusion, the doctrine would mean that an assignee or ordinary trustee would have